

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

JAMES WINDING

PLAINTIFF

VS.

CIVIL ACTION NO. 4:12cv8-FKB

MAJOR B. MIZA

DEFENDANT

MEMORANDUM & OPINION

James C. Winding is a state prisoner incarcerated at East Mississippi Correctional Facility (EMCF). He brought this action pursuant to § 1983 alleging that a prison officer violated his rights on January 7, 2012, by pointing a high-powered paint ball gun at him and threatening to shoot. A *Spears*<sup>1</sup> hearing has been held, and the parties have consented to jurisdiction by the undersigned.

The Prison Litigation Reform Act (PLRA) requires an inmate to exhaust administrative remedies before bringing an action with respect to prison conditions. 42 U.S.C. § 1997(e). The PLRA's exhaustion requirement is mandatory and "applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). In his testimony at the *Spears* hearing, Plaintiff admitted that he has failed to complete EMCF's Administrative Remedies Program (ARP) process for this claim. He stated that although he has filed an ARP grievance based upon this incident, that grievance remains in "backlog" because of the number of pending grievances filed by him.

Dismissal is appropriate where an inmate has failed to meet the exhaustion

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<sup>1</sup>See *Spears v. McCotter*, 766 F.2d 179 (5<sup>th</sup> Cir. 1985).

requirement. *Alexander v. Tippah Cnty., Miss.*, 351 F.3d 626, 630 (5<sup>th</sup> Cir. 2003). For this reason, this action is dismissed without prejudice so that Plaintiff may pursue his administrative remedies. A separate judgment will be entered.

SO ORDERED this the 5<sup>th</sup> day of June, 2012.

/s/ F. Keith Ball

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UNITED STATES MAGISTRATE JUDGE